

Proc I

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

10,568

FILE: B-194143

DATE: June 26, 1979

MATTER OF: Conine Rentals, Inc., dba Budget Rent a  
Car of San Antonio

DIGEST:

1. Where doubt exists on written record as to date protester knew or should have known of grounds of protest, doubt should be resolved in favor of timeliness.
2. Agency properly refused to apply prompt payment discount of less than 20 days in evaluation of bids as called for in Solicitation Instructions and Conditions, incorporated by reference in solicitation.
3. Obtaining referenced forms necessary to preparation of bid is responsibility of potential bidder.
4. Despite advantage of lower price if protesters' bid were modified to include acceptable discount term, bid cannot be explained or changed after opening unless actual intent to offer minimum acceptable term was apparent from face of bid.

Conine Rentals, Inc., dba Budget Rent a Car of San Antonio (Conine), has protested the rejection of its bid under invitation for bids No. 7PF-51692/A8/7AV, issued by the General Services Administration, Federal Supply Services, Region 7 (GSA), for rental of motor vehicles without drivers at locations throughout Region 7.

Two issues are presented for our resolution in this protest: (1) whether Conine's protest was timely filed with this Office; and (2) whether Conine's bid was properly evaluated with regard to the offered prompt-payment discount.

[Protest INVOLVING Bid REJECTION]

005690

GSA urges dismissal of the protest as untimely, stating that on January 15, 1979, the Vice President of Conine was informed by telephone of the discount terms of its bid in relation to those of the apparent low bidder, Southwest Texas Leasing Company (Southwest). Therefore, in GSA's analysis, Conine was made aware of the grounds for protest on January 15 and its protest filed more than 10 working days later on February 15, 1979, was untimely. DLG 01918

For the reasons that follow, we find the protest timely. The contemporaneous memorandum of the January 15 conversation made by the GSA's representative, reads in part as follows:

"\* \* \* Talked to [Vice President of Conine] and advised him that the apparent low bid on San Antonio was Southwest Tx. Lsg. Co. He said he thought he had offered a better price and I informed him that his prompt payment discount was 7% -10 while Southwest Tx. Lsg. was 8.5% 20 days. He said he would tell his employer \* \* \*." [Emphasis in original.]

Although it could be inferred from the above that the 7 percent 10-day discount had not been applied in evaluating the bid, it cannot be said with certainty that Conine knew this fact on January 15. Where, as here, uncertainty exists in the written record as to the date on which the protester knew or should have known the grounds of protest, we feel that the doubt should be resolved in favor of timeliness.

According to the agency report, GSA's representative has since stated that she recalls telling Conine's Vice President that only discounts of 20 days or more were applied for the purpose of evaluating bids; however, that fact is not recited in the memorandum of the call, which constitutes the only available written record of the conversation, and upon which we must determine timeliness. Hammer Security Service of California, Inc. - Reconsideration, B-190056, April 4, 1978, 78-1 CPD 265. Furthermore, Conine averred in its reply to the agency report that it had no knowledge of the refusal of its

discount offer until February 1, 1979, when it was informed of the award to Southwest on January 17, 1979, and of the discount requirements set forth in the forms referenced by the solicitation. GSA and Conine agree, and the memorandum of the conversation documents the fact, that on February 1, 1979, Conine was fully aware of the grounds for protest. Accepting February 1 as the date upon which the grounds were known, the protest received in our Office on February 15, 1979, was timely filed within 10 working days.

The substantive question raised by Conine is whether it was proper for GSA to decline to apply Conine's 7 percent 10-day discount in the evaluation of its bid. The use of discounted prices for the evaluation of bids is governed by the terms of the solicitation and the accompanying forms, specifically, standard form 33A, entitled "Solicitation Instructions and Conditions." Paragraph 9 of SF 33A is referenced in the solicitation at the section entitled "Discount for Prompt Payment," and it provides as follows:

"(a) \* \* \* notwithstanding the fact that a blank is provided for a ten (10) day discount prompt payment discounts offered for payment within less than twenty (20) calendar days will not be considered in evaluating offers for award, unless otherwise specified in the solicitation. However, offered discounts of less than 20 days will be taken if payment is made within the discount period, even though not considered in the evaluation of offers."

Southwest's bid was low only because its 8.5 percent 20-day discount was applied in evaluating its bid, while Conine's undiscounted price was used because its 10-day discount did not qualify for inclusion according to the instructions quoted above.

Conine claims that the forms are misleading, because a blank was provided for a 10-day discount, leading Conine to believe that a 10-day discount would be included in the evaluation, and Conine also complains that SF 33A was not mailed to Conine along with the solicitation.

The language of the solicitation is clear; it is not misleading. On the first page, the reader is advised that SF 33A is "attached or incorporated by reference," and at page 5 appears the statement that SF 33A "is incorporated by reference and made a part of this solicitation." The same paragraph states that the "receipt [of all incorporated forms] is acknowledged by the offeror" and it continues that the forms "if not enclosed, are available on request \* \* \* (emphasis added)." The name and telephone number of the GSA representative to contact for information is prominently displayed next to the quoted language on both pages. Any bidder, particularly one who, like Conine, has previously done business with the Government, should have realized the importance of reading the solicitation carefully and of obtaining all referenced forms.

The prompt payment discount block in the solicitation requests that the bidder state discounts granted for payment made within 10, 20, 30 or more days. The same section cautions the bidder to see SF 33A, paragraph 9, where the discount formula is explained. A bidder having any question concerning the applicability of discounts should have called GSA for information or checked the instructions.

The fact that Conine did not receive a copy of SF 33A with the solicitation does not excuse its failure to obtain the form when it was plainly essential and readily available. Neither does it alter the fact that the form was properly incorporated by reference and thus Conine had constructive knowledge of its contents.

GSA was correct in applying discounts of 20 or more days in the evaluation of bids as directed in the instructions. Solicitations generally must be interpreted with the aid of all referenced forms and in the light of any applicable regulations. On the question of discounts and their directed application in evaluating bids, we held in 37 Comp. Gen. 162 (1957) that instructions must be consulted to determine the minimum acceptable prompt payment discount. More recently we have examined the same forms and found that it is not necessary to specify acceptable discounts on the face of the solicitation unless the acceptable discount term differs from that provided in SF 33A. Afro American Datanamics, Inc., B-190703, December 8, 1977, 77-2 CPD 448.


Conine has also asserted that it would have bid 20 days had it known that was the minimum term. In a similar situation we held that a bidder who offered a 10-day discount in the mistaken belief that it would be applied in evaluating its bid could not change its bid after opening to offer a longer discount period. 53 Comp. Gen. 502, 507, (1974). In that case we applied the long settled rule that when the correction of a mistake in a bid would result in the displacement of an otherwise low bidder, the actual intention of the mistaken bidder must be apparent on the face of the bid. 52 Comp. Gen. 604 (1973).

The same rule obtains here with the same effect. If Conine's discount were applied, it would displace Southwest as the low bidder. There is no evidence on the face of Conine's bid which would indicate any intent other than to offer a 10-day prompt-payment discount of 7 percent and to permit Conine to explain or change its bid at this time would:

"serve to undermine the integrity of the bidding system and cause overall harm to the system of competitive bidding despite the immediate advantage gained by a lower price in the particular procurement."

Tennessee Lithographing Company, B-188967, May 26, 1977, 77-1 CPD 371.

The protest is denied.

  
Acting Comptroller General  
of the United States